

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference PCG-9001WO	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/JP2004/011650	International filing date (day/month/year) 06.08.2004	Priority date (day/month/year) 08.08.2003
International Patent Classification (IPC) or national classification and IPC C12N15/12, C12Q1/68, C07K14/82, A61K31/711, C07K16/32, C12N5/10, G01N33/15, G01N33/50		
Applicant ABURATANI, Hiroyuki		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 8 sheets, including this cover sheet.

3. This report is also accompanied by ANNEXES, comprising:

a. ☐ (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:

☐ sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).

☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.

b. ☒ (sent to the International Bureau only) a total of _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the report
<input type="checkbox"/>	Box No. II	Priority
<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/JP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/011650

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following _____ which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☒ the international application as originally filed/furnished
- ☐ the description:
- pages _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☐ the claims:
- nos. _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* _____ received by this Authority on _____
- nos.* _____ received by this Authority on _____
- ☐ the drawings:
- sheets _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☒ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/011650

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos. 28-37

because:

☒ the said international application, or the said claims Nos. 28-37

relate to the following subject matter which does not require an international preliminary examination (*specify*):

The subject matter of claims 28-37 relates to methods for treatment of the human body therapy, as well as diagnostic methods. Thus, this International Preliminary Examining Authority is not required to carry out international preliminary examination on this subject matter under the provisions of PCT Article 17(2)(a)(i) and PCT Rule 67.1(iv).

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____ are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. _____ are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for said claims Nos. _____

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☒ See Supplemental Box for further details.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/011650

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims	<u>3</u>	YES
	Claims	<u>1, 2, 10, 11, 13-16, 24-27</u>	NO
Inventive step (IS)	Claims	<u></u>	YES
	Claims	<u>1-3, 10, 11, 13-16, 24-27</u>	NO
Industrial applicability (IA)	Claims	<u>1-3, 10, 11, 13-16, 24-27</u>	YES
	Claims	<u></u>	NO

2. Citations and explanations (Rule 70.7)

Document 1: WO 02/046415 A2 (Incyte Genomics, Inc.)

Document 2: US 2003/0003538 A1 (Dietrich P.S. et al.)

Document 3: WO 03/029424 A2 (Curagen Corporation)

Parts of Claims 1, 2, 10, 11, 13 to 16 and 24 to 27

Concerning SEQ ID NO: 1

Documents 1 to 3 set forth protein coded by SEQ ID NO: 1 of this application, and fragments thereof (SEQ ID NO: 30, document 1; SEQ ID NO: 16, document 2; SEQ ID NO: 162, document 3). Documents 1 to 3 also set forth an antibody which recognizes these fragments. Documents 2 and 3 also set forth polynucleotides which code said fragments (document 2, SEQ ID NO: 15, document 3, SEQ ID NO: 161), and indicate that these polynucleotides are incorporated into vectors and transformed. Documents 2 and 3 also set forth methods of identifying anti-cancer activity.

There is therefore no discernible difference between the inventions set forth in documents 1 to 3 and the invention set forth in claims 1, 2, 10, 11, 13 to 16 and 24 to 27 of this application.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/011650

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

Part of Claim 3 Concerning SEQ ID NO: 1

Document 1 sets forth protein coded by SEQ ID NO: 1 of this application, and fragments thereof (SEQ ID NO: 30), and indicates that said protein is concerned with lung cancer (page 66, lines 27 to 29). It would therefore be easy for a person skilled in the art to conceive of employing the protein set forth in document 1 in the diagnosis and/or treatment of lung cancer.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/011650

Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
WO 2004/040000 A2	13.05.2004	09.09.2003	09.09.2002

[E, X]

2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/011650

Supplemental Box Relating to Sequence Listing

Continuation of Box No. I, item 2:

1. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this report was established on the basis of:
- a. type of material
- ☒ a sequence listing
- ☐ table(s) related to the sequence listing
- b. format of material
- ☐ in written format
- ☒ in computer readable form
- c. time of filing/furnishing
- ☐ contained in the international application as filed
- ☒ filed together with the international application in computer readable form
- ☐ furnished subsequently to this Authority for the purposes of search and/or examination
- ☐ received by this Authority as an amendment* on _____
2. ☒ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
3. Additional comments:

* If item 4 in Box No. I applies, the listing and/or table(s) related thereto, which form part of the basis of the report, may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/011650

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of:

(Continued from Box III)

The international search report has not been prepared for the parts of claims 4 to 9, 12, 17 to 23, 28 to 37 and claims 1 to 3, 10, 11, 13 to 16 and 24 to 27 excluding those parts relating to SEQ ID NO: 1.